

## APPEAL NO. 010868

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 29, 2001. The hearing officer determined that the respondent's (claimant) compensable (right knee) injury included an injury to the left knee.

The appellant (carrier) appealed, basically on sufficiency of the evidence grounds, contending that this was an "overuse" injury to the opposite extremity and therefore is not compensable, and that its expert medical evidence was more credible than that of the claimant. The claimant responds, urging affirmance.

### DECISION

Affirmed.

The claimant was employed as a sewing machine operator and sustained a compensable right knee injury on \_\_\_\_\_. The claimant had surgery for her right knee injury on October 28, 1998. The claimant testified that after her surgery her right knee would "give out" and she put more stress on her left knee. The parties disagree whether this is an "overuse" or "follow-on" injury, or an "altered gait" situation.

The medical evidence was conflicting. Dr. O, the claimant's treating doctor, in a report of August 10, 1999, noted "significant increasing pain in [claimant's] left knee"; in a report of November 26, 1999, noted "the left knee was initially asymptomatic but . . . [claimant] has to favor the right knee, as well as the way that she has to use her left knee for moving in an[d] out of her work station"; and concluded that "the problems that she is having with her left knee are due to arthritic changes in the joint that have been made symptomatic or aggravated by her work related injury to the right knee." In response to a questionnaire, Dr. O stated with reasonable medical probability that the right knee injury "affected [claimant's] gait" which caused or contributed to a left knee injury. Dr. M, the carrier's required medical examination doctor, in a report dated February 21, 2000, addresses, principally, a rating for the right knee and comments that the claimant has full extension and flexion in both knees. Dr. C, the designated doctor for the right knee injury, does not address causation of the left knee problems and rated only the right knee.

Conflicting evidence was presented on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge